Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., A Rural Telephone Company	)	CC Docket No. 96-45

Comments of CenturyTel of Eagle, Inc.

CenturyTel of Eagle, Inc. ("CenturyTel"), through its attorneys, hereby offers the following Comments on the Public Notice issued in the above-captioned proceeding released August 26, 2002.[1]

I. INTRODUCTION

On May 13, 2002, CenturyTel elected to disaggregate and target universal service support pursuant to Path 3 of the Federal Communications Commission's ("FCC" or "Commission") rules.[2] CenturyTel, a rural telephone company, calculated support at the wire center level[3] based on two support zones for the entire study area, a low-cost area and a high-cost area. Each of the 53 wire centers represents a CenturyTel exchange. The Colorado Public Utilities Commission ("Colorado PUC") adopted rules requiring that a rural telephone company's service area be redefined in accordance with the method the carrier elected for

1 *The Colorado Public Utilities Commission Petitions to Redefine the Service Area of CenturyTel of Eagle, Inc. in the State of Colorado*, Public Notice, (rel. Aug. 26, 2002) ("Public Notice").

2 CenturyTel of Eagle, Inc. Study Area Code No. 462185 at 1, ¶4, filed May 13, 2002 ("Disaggregation Plan").

3 Although CenturyTel's Disaggregation Plan states that it has 53 wire centers, wire center in this context is synonymous with exchange area.

purposes of disaggregating support.[4] However, the Colorado PUC did not propose to define two new service areas for CenturyTel, matching the two support zones CenturyTel elected for universal service disaggregation. Rather, on August 1, 2002, the Colorado PUC submitted to the FCC a petition proposing to designate each of CenturyTel's 53 wire centers or exchanges as separate service areas.[5] This would serve the purpose of defining the minimum area a competitive eligible telecommunications carrier would be required to serve. The Commission issued a Public Notice on August 26, 2002, seeking comment on the Colorado PUC's redefinition of CenturyTel's service area.[6]

II. DISCUSSION

For areas served by a rural telephone company, Section 214(e)(5) of the Communications Act of 1934, as amended (the "Act")[7] provides that the company's "service area" for federal support purposes[8] will be its study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board . . . , establish a different definition of service area for such company."[9] The Colorado PUC seeks Commission approval to designate each of CenturyTel's 53 wire centers as separate service areas

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4 *In the Matter of the Proposed Amendments to the Rules Concerning the Colorado High Cost Support Mechanism, 4 CCR 723-41, and the Rules Concerning Eligible Telecommunications Carriers, 4 CCR 723-42*, Ruling on Exceptions and Order Vacating Stay, Decision No. C02-319 (rel. Mar. 18, 2002).

5 Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company (filed Aug. 1, 2002) ("Colorado Petition").

6 Public Notice, *supra*, note 1.

7 47 U.S.C. § 151 *et seq*.

8 Section 54.207(a) of the FCC's rules defines service area as the geographic area "for which the carrier shall receive support from federal universal service support mechanisms." 47 C.F.R. § 54.207(a).

9 47 U.S.C. § 214(e)(5). The FCC's rules reiterate the presumption that the service area for universal service funding purposes should be the rural LEC's entire study area and sets forth the requirement for state petitions in order to change that definition. 47 C.F.R. § 54.207(a).

for competitive eligible telecommunications carriers ("CETCs").[10] On the theory that this will encourage competitive entry in at least some of those wire centers, CenturyTel offers these comments to point out that, while the goal is a good one, the means proffered by the Colorado PUC are not likely to serve the public interest but rather to send improper signals to competitors and encourage cherry picking in these rural markets.

A. To require that CenturyTel's current study area be divided into 53 smaller ETC service areas is inconsistent with CenturyTel's disaggregation filing and is not in the public interest.

CenturyTel fully supports a rural carrier's choice to disaggregate support below the study area level because it allows the carrier to more accurately target per-line support to the relatively higher cost lines, as the FCC and the Rural Task Force intended. In the *RTF Order*, the Commission permitted rural carriers to elect one of three paths to disaggregate and target per-line high-cost support into geographic areas below the study area level.[11] Under the *RTF Order*'s Path 3 self-certification process, carriers were allowed to choose a disaggregation plan of up to two cost zones per wire center or a disaggregation plan that complies with a prior regulatory determination.[12] Consistent with the *RTF Order*, on May 13, 2002, CenturyTel of Eagle elected to disaggregate and target high-cost universal service support under Path 3 in the State of Colorado.[13] CenturyTel of Colorado elected Path 1.

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[10] Colorado Petition at 3.

[11] *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("*RTF Order*").

[12] 47 C.F.R. § 54.315(d).

[13] Disaggregation Plan, *supra*, note 2.

CenturyTel's disaggregation plan established two support zones for the entire study area.[14] For disaggregating loop-related support, CenturyTel defined a lower-cost zone for those areas where costs are relatively lower, thereby requiring relatively less loop-related support, while the remaining support assigned to the study area was distributed to the remaining lines in the higher cost zone.[15] Separating the study area into two support zones, as CenturyTel did, decreases the chances that support will be misdirected; however, regardless of the state, study area or company at issue, it is clear that the disaggregation process is an imperfect exercise. Even within one of the CenturyTel zones, not all lines have the same cost characteristics. Thus, when support is disaggregated below the study area level, support within a zone may be high as to certain wire centers and low for others because it is *averaged* across the zone. Although CenturyTel was able to calculate relative cost down to the wire center, which is the same as the individual exchange, support was established based on two support zones – not 53. The two zones comprise areas with relatively similar cost characteristics although, as noted, costs still are averaged within each zone. Dividing the current service area, comprised of the entire study area, into 53 ETC service areas is inconsistent with CenturyTel's two-support zone disaggregation filing and will not bring the benefits of competition to all customers. It would allow a carrier that does not have to serve an entire zone to target only the most profitable wire centers within the zone and receive high-cost support even though the CETC's average costs may be lower than the ILEC's.

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14 *Id.* at 1, ¶4.

15 *Id*. at 2, ¶6.

B. Dividing CenturyTel's current study area into 53 smaller service areas will encourage inefficient market entry and ultimately harm consumers.

Although the FCC has adopted policies that promote the goal of fostering competition, it has repeatedly acknowledged that not all competitive entry is in the public interest. In particular, the Commission has cautioned against pricing policies that encourage inefficient entry by artificially inflating prices in lower cost areas to keep prices to customers in higher cost areas at reasonable levels.[16] The Commission acknowledged that such policies encourage "cherry picking" by new entrants not required to serve the entire population served by the incumbent.[17] Hence, the Commission encouraged states to realign prices with costs by eliminating such internal subsidies, and to adjust universal service payments to target the higher cost lines.

Establishing 53 ETC service areas may result in inefficient competition by encouraging CETCs to engage in cherry picking. CETCs who are permitted to serve a single wire center can target a wire center where support is highest relative to costs. This will not promote lasting competition but only attract competitors who otherwise could not serve the entire market on a cost-effective basis. Such arbitrage ultimately harms consumers in the remaining areas served by CenturyTel by depriving CenturyTel of needed revenues to invest in those high-cost areas.

Redefining CenturyTel's study area to the wire center level also is inconsistent with the manner in which the company is regulated. CenturyTel is not and has never been regulated on a wire center basis in the State of Colorado. Rather, CenturyTel's state-authorized

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16 *Access Charge Reform/Price Cap Performance Review for Local Exchange Carriers/Transport Rate Structure and Pricing/End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982 at ¶30 (1997).

17 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 at 8786-87, ¶17 (1997).

rates and its rate-of-return are both based on study area (not wire center) boundaries. To now redefine CenturyTel's service area at the wire center level only for purposes of CETC designation would be inconsistent with current regulation. This presents further arbitrage opportunities for competitors whose rates and earnings are not regulated.

C. The FCC should enforce the letter and spirit of the law and either require that CETCs provide service to CenturyTel's entire study area or justify to the state and federal commissions why changing the service area would serve the public interest.

Only in special circumstances, where it is found in the public interest by the state commission, can additional ETCs for a service area be designated in rural areas.[18] The Colorado Petition notes that some carriers have been unable to obtain ETC designation because they lacked the facilities to provide service throughout the entirety of the CenturyTel service area.[19] First, the Act permits CETCs to receive support for services provided through a combination of facilities-based service and resale.[20] Second, the state does not have to redefine CenturyTel's study area for all CETCs in a manner that is inconsistent with the way CenturyTel is currently regulated, and that encourages inefficient market entry and cherry picking. Rather, the Act allows an ETC that can justify serving less than the entire study area to seek approval from the FCC and the state commission.[21]

Section 214(e) of the Act provides that a rural telephone company's service area shall be the company's study area "unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under Section 410(c) of

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18 47 U.S.C. § 214(e).

19 Colorado Petition at 7.

20 47 C.F.R. § 54.201(d).

21 47 U.S.C. § 214(e).

the Act, establish a different definition of service area for such company."[22] The Act does not permit a CETC unilaterally to decide to serve a geographic area other than the rural carrier's study area, and still receive support, for the economically sound reasons discussed above. CenturyTel urges the Colorado PUC and the FCC not to categorically eliminate the presumption that a CETC must serve CenturyTel's study area, but rather treat requests by individual CETCs to serve a smaller area on a case-by-case basis. This will allow the Commission to enforce the letter and spirit of the law and either require that CETCs provide service to the entire study area or justify to the state and federal commissions why it would serve the public interest to change their service areas.

D. The Commission should examine whether a CETC's costs justify high-cost support.

While a rural ILEC is eligible for high-cost support only if its loop costs exceed 115% of the national average loop cost,[23] CETCs receive support based on what the rural ILEC receives.[24] Thus, CETC support is derived without any regard to whether the CETC's costs are actually above 115% of the national average loop cost, even though the Commission has acknowledged that "CLEC[s] may have costs different from the ILEC."[25] Indeed, as Western Wireless has pointed out in FCC proceedings and as the Commission itself has recognized, wireless systems can often be constructed at lower cost than wireline networks, particularly in

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22 47 C.F.R. § 54.207(b).

23 47 C.F.R. § 36.631.

24 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶289 (1997).

25 *Id.*

high-cost areas.[26] Thus, CenturyTel believes that the distribution of high-cost support to CETCs cannot continue to be based on ILEC costs as a proxy.[27]

Allowing CETCs with low-cost loops to receive high-cost support violates Section 254(e) of the Act. Section 254(e) requires ETCs receiving support to "use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[28] The statute also "sets standards to prevent waste, windfalls and excessive expense for contributing carriers and their customers."[29] Each time a CETC accepts high-cost loop support for low-cost loops, it potentially receives a windfall through receipt of universal service support. In short, distributing high-cost loop support to CETCs based on ILEC costs is contrary to demonstrable evidence that wireless CETCs' actual costs are lower than wireline carriers, distorts the marketplace, and gives CETCs the perverse incentive to serve customers even where it would not otherwise be cost efficient to do so. Therefore, the Commission should not approve a blanket definition of CenturyTel's service area to make it easier for competitors to obtain support in areas they can cheaply serve. Rather, the FCC should examine each CETC's request based on its justification for serving a limited area, and based on an evaluation of the CETC's costs of serving that area, to ensure the support is being used for the purpose for which it is intended.

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26 *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673 (1999) (". . . some facilities-based entry strategies show promise of surmounting the competitive advantages inherent in the incumbent LECs' control of in-place facilities by avoiding the need to construct new, costly wireline networks. In particular, fixed wireless systems can often be constructed in less time, at lower cost, and in smaller increments than wireline networks, especially in areas where the costs of wireline links may be especially high.").

27 ACS of FairBanks, Inc. recently filed a Petition for Declaratory Ruling demonstrating why high-cost loop support for CETCs should not be based on ILEC costs. ACS of FairBanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act, filed July 24, 2002.

28 47 U.S.C. § 254(e).

E. The Commission must ensure that the mobility of a wireless CETC's service offering does not undermine the universal service fund.

As CenturyTel has pointed out in other Commission proceedings,[30] the Commission should give full consideration to the impact on the universal service fund of the mobile nature of a wireless CETC's service offering. The Commission's rules provide that mobile wireless ETCs "shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area."[31] Because the service area in which a customer resides may bear no relationship to the location where wireless service is actually used, high-cost support may be used to serve customers where such support is not needed, in violation of Section 254(e) of the Act -- unless certain protections are put into place. In addition, any policy that allows subsidies to flow to carriers that might not provide service in high-cost areas will send incorrect market signals to potential entrants, as discussed above. A wireless CETC may experience a windfall if it is allowed to receive high-cost support based on CenturyTel's higher average costs of the service area in which the customer's address is located, while service actually is used primarily in a relatively low-cost area. For these reasons, CenturyTel urges the Commission to adopt safeguards, similar to those that Smith Bagley stipulated to in New Mexico,[32] prohibiting wireless ETC customers from using more than 25% of minutes included in the universal service plan outside of the wireless ETC's service area.

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29 Rural Task Force, FCC 00J-4, CC Docket 96-45, Recommendation to the Federal-State Joint Board on Universal Service at ¶8 (rel. Sept. 29, 2000).

30 *E.g.,* CenturyTel Comments filed in CC Docket 96-45 on Apr. 4, 2002.

31 47 C.F.R. § 54.307(b). CRTC filed a petition for reconsideration of this rule. CRTC Petition for Reconsideration (filed in CC Docket 96-45, CC Docket No. 00-256 on July 5, 2001). CenturyTel filed comments in support of CRTC's petition. CenturyTel Comments (filed in CC Docket 96-45, CC Docket No. 00-256 on July 31, 2001).

32 Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e), Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation, Exhibit A (NM PRC rel. Aug. 14, 2002). The New Mexico Commission, without explanation, eliminated from the Hearing Examiner's Recommended Decision the requirement that SBI comply with its mobility

F. The Commission must ensure that a wireless CETC's service offering meets the definition of a supported service.

Section 54.201(d) of the Commission's rules provides that eligible telecommunications carriers must offer the services that are supported by the federal universal service fund.[33] Local usage is one of the supported services. Although the Commission has previously acknowledged the importance of setting a minimum level of local usage that an ETC must provide to customers as part of a basic service package, it has not yet quantified what the *minimum* local usage amount should be in order to qualify for universal service support. Wireless carriers often have rate plans that, at the low end, provide little or no local usage. Without a minimum local usage, wireless carriers may be able to maximize support payments by winning many customers with "free" or nearly free monthly access while minimizing the cost of service by discouraging its use through extremely high per-minute usage charges. Unlimited local usage or service priced at rates comparable to the incumbent's, however, enables the consumer to avoid additional per-minute fees and ensures that the consumer receives the benefits universal service is designed to promote. The Commission should quickly resolve the critical issue of minimum local usage to ensure that only service offerings that meet the definition of universal service are supported. Otherwise, universal service goals could be frustrated by the proliferation of wireless ETCs, all demanding support for services that do not advance the Commission's universal service goals. While competition is an important issue, competition alone -- without rational or meaningful market entry signals -- does not always serve the public interest. The Commission should ensure that increase demands for universal service are offset by corresponding public interest benefits.

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stipulation. Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e), Utility Case No. 3026, Final Order (NM PRC rel. Feb. 12, 2002).

33 47 C.F.R. § 54.201(d).

III. CONCLUSION

For the foregoing reasons, CenturyTel urges the Commission to reject any proposal that establishes multiple ETC service areas at the wire center level because such a proposal is inconsistent with CenturyTel's disaggregation filing, will result in inefficient market entry, and does not serve the public interest. As pressure on the universal service fund increases, the Commission must ensure that universal service arbitrage opportunities, which ultimately harm consumers, are eliminated. In addition, CenturyTel urges the Commission to ensure that (1) a CETC's costs justify high-cost loop support; (2) CETCs either provide service to CenturyTel's entire study area or justify to the state and federal commissions why changing the service area would serve the public interest; (3) a CETC's service area meets the definition of "high cost"; (4) the mobility of a wireless CETC's service offering does not undermine the universal service fund; and (5) a wireless CETC provides all of the supported services required to receive universal service support.

Respectfully submitted,
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